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representative of such objector of the proposed standards despite his exercise of due diligence, so long as such later filing will not cause undue delay in the proceedings or prejudice to any of the parties.

(b) *Objections.* Any objection to a proposed standard which is filed pursuant to paragraph (a) of this section shall meet the following requirements:

(1) It shall be filed in triplicate with the hearing clerk within the time prescribed in paragraph (a) of this section;

(2) It shall state concisely and with particularity each portion of the proposed standard to which objection is taken; to the greatest extent feasible it shall state the basis for such objection;

(3) To the greatest extent feasible it shall (i) state specifically the objector's proposed modification to any such standard proposed by the Agency to which objection is taken, (ii) set forth the reasons why such modification is sought, and (iii) identify and describe the scientific or other basis for such proposed modification, including reference to any pertinent scientific data or authority in support thereof.

Any objection which fails to comply with the foregoing provisions shall not be accepted for filing. The Presiding Officer shall promptly notify any person whose objection is not accepted for any of the reasons set forth in this section, stating the reasons therefor.

(c) *Data in support of objection or modification.* In the event that the time prescribed for filing objections pursuant to paragraphs (a) and (b) of this section is insufficient to permit an objecting party to fully set forth with such objection the basis therefor together with the information and data specified in paragraph (b)(3) of this section, he may so state at the time of the filing of such objection, and file a more complete statement of such basis, information, and data (hereinafter referred to as "supplemental data") within the time prescribed by this paragraph (c). The supplemental data herein described shall be filed not later than 40 days following publication of the proposed effluent standards.

(d) *Public comment.* The notice required under paragraph (a) of this section shall also provide for the submission to the Agency of written com-

ments on the proposed rulemaking by interested persons not filing objections pursuant to this section as hereinabove described, and hence not participating in the hearing as parties. The notice shall fix a time deadline for the submission of such comments which shall be not later than the date set for commencement of the hearing. Such comments shall be received in evidence at the commencement of the hearing. The Administrator in making any decision based upon the record shall take into account the unavailability of cross-examination in determining the weight to be accorded such comments.

(e) *Promulgation in absence of objection.* If no objection is filed pursuant to this section, then the Administrator shall promulgate the final standards on the basis of the Agency's statement of basis and purpose and any public comments received pursuant to paragraph (d) of this section.

§ 104.4 Statement of basis and purpose.

Whenever the Administrator publishes a proposed effluent standard, the notice thereof published in the FEDERAL REGISTER shall include a statement of the basis and purpose of the standard or a summary thereof. This statement shall include:

(a) The purpose of the proposed standard;

(b) An explanation of how the proposed standard was derived;

(c) Scientific and technical data and studies supporting the proposed standard or references thereto if the materials are published or otherwise readily available; and

(d) Such other information as may be reasonably required to set forth fully the basis of the standard.

Where the notice of the proposed rulemaking summarizes the full statement of basis and purpose, or incorporates documents by reference, the documents thus summarized or incorporated by reference shall thereupon be made available by the Agency for inspection and copying by any interested person.

§ 104.5 Docket and record.

Whenever the Administrator publishes a notice of hearing under this part, the hearing clerk shall promptly establish a docket for the hearing. The

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docket shall include all written objections filed by any party, any public comments received pursuant to §104.3(d), a verbatim transcript of the hearing, the statement of basis and purpose required by §104.4, and any supporting documents referred to therein, and other documents of exhibits that may be received in evidence or marked for identification by or at the direction of the Presiding Officer, or filed by any party in connection with the hearing. Copies of documents in the docket shall be available to any person upon payment to the Agency of such charges as the Agency may prescribe to cover the costs of duplication. The materials contained in the docket shall constitute the record.

§ 104.6 Designation of Presiding Officer.

The Chief Administrative Law Judge of the Agency may preside personally at any hearing under this part, or he may designate another Administrative Law Judge as Presiding Officer for the hearing. In the event of the unavailability of any such Administrative Law Judge, the Administrator may designate a Presiding Officer. No person who has any personal pecuniary interest in the outcome of a proceeding under this part, or who has participated in the development or enforcement of any standard or proposed standard at issue in a proceeding hereunder, shall serve as Presiding Officer in such proceeding.

§ 104.7 Powers of Presiding Officer.

The Presiding Officer shall have the duty to conduct a fair hearing within the time constraints imposed by section 307(a) of the Act. He shall take all necessary action to avoid delay and to maintain order. He shall have all powers necessary to these ends, including but not limited to the power to:

- (a) Rule upon motions and requests;
- (b) Change the time and place of the hearing, and adjourn the hearing from time to time or from place to place;
- (c) Examine and cross-examine witnesses;
- (d) Admit or exclude evidence; and
- (e) Require any part or all of the evidence to be submitted in writing and by a certain date.

§ 104.8 Prehearing conferences.

Prehearing conferences are encouraged for the purposes of simplification of issues, identification and scheduling of evidence and witnesses, the establishment of an orderly framework for the proceedings, the expediting of the hearing, and such other purposes of a similar nature as may be appropriate.

(a) The Presiding Officer on his own motion may, and at the request of any party made within 20 days of the proposal of standards hereunder shall, direct all parties to appear at a specified time and place for an initial hearing session in the nature of a prehearing conference. Matters taken up at the conference may include, without limitation:

- (1) Consideration and simplification of any issues of law or fact;
- (2) Identification, advance submission, marking for identification, consideration of any objections to admission, and admission of documentary evidence;
- (3) Possible stipulations of fact;
- (4) The identification of each witness expected to be called by each party, and the nature and substance of his expected testimony;
- (5) Scheduling of witnesses where practicable, and limitation of the number of witnesses where appropriate in order to avoid delay or repetition;
- (6) If desirable, the segregation of the hearing into separate segments for different provisions of the proposed effluent standards and the establishment of separate service lists;
- (7) Encouragement of objecting parties to agree upon and designate lead counsel for objectors with common interests so as to avoid repetitious questioning of witnesses.

(b) The Presiding Officer may, following a prehearing conference, issue an order setting forth the agreements reached by the parties or representatives, the schedule of witnesses, and a statement of issues for the hearing. In addition such order may direct the parties to file and serve copies of documents or materials, file and serve lists of witnesses which may include a short summary of the expected testimony of each and, in the case of an expert witness, his curriculum vitae, and may contain such other directions as may